U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

(b)(6)

U.S. Citizenship and Immigration Services

[redacted]

DATE: AUG 2 6 2014 Office: TEXAS SERVICE CENTER FILE: [redacted]

IN RE: Petitioner: [redacted]
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as an Alien of Extraordinary Ability Pursuant to Section 203(b)(1)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(1)(A)

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at http://www.uscis.gov/forms for the latest information on fee, filing location, and other requirements.** *See also* 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, denied the immigrant visa petition and the matter is now before the Administrative Appeals Office on appeal. We will dismiss the appeal.

The petitioner, a kickboxing trainer and coach, seeks classification as an employment-based immigrant pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(A), as an alien of extraordinary ability in athletics.[1] The director determined that the petitioner had not met the requisite criteria for classification as an alien of extraordinary ability.

Congress set a very high benchmark for aliens of extraordinary ability by requiring through the statute that the petitioner demonstrate the alien's "sustained national or international acclaim" and present "extensive documentation" of the alien's achievements. *See* section 203(b)(1)(A)(i) of the Act and 8 C.F.R. § 204.5(h)(3). The implementing regulation at 8 C.F.R. § 204.5(h)(3) states that an alien can establish sustained national or international acclaim through evidence of a one-time achievement of a major, internationally recognized award. Absent the receipt of such an award, the regulation outlines ten categories of specific objective evidence. 8 C.F.R. § 204.5(h)(3)(i) through (x). The petitioner must submit qualifying evidence under at least three of the ten regulatory categories of evidence to establish the basic eligibility requirements. The director determined that the petitioner's evidence had met the category of evidence at 8 C.F.R. § 204.5(h)(3)(iv).

On appeal, the petitioner asserts that he meets the categories of evidence at 8 C.F.R. § 204.5(h)(3)(i), (ii), (iii), and (v). In Part 2 of the Form I-290B, Notice of Appeal or Motion, the petitioner checked box "B" indicating "[m]y brief and/or additional evidence will be submitted to the AAO within 30 days." The appeal was filed on December 13, 2013. As of this date, more than eight months later, we have received nothing further.

I. LAW

Section 203(b) of the Act states, in pertinent part, that:

> (1) Priority workers. -- Visas shall first be made available . . . to qualified immigrants who are aliens described in any of the following subparagraphs (A) through (C):
>
> > (A) Aliens with extraordinary ability. -- An alien is described in this subparagraph if --
> >
> > > (i) the alien has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation,

[1] According to Form I-94, Arrival-Departure Record, the petitioner was last admitted to the United States on October 5, 2012 as a B-2 nonimmigrant visitor for pleasure.

(ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and

(iii) the alien's entry into the United States will substantially benefit prospectively the United States.

U.S. Citizenship and Immigration Services (USCIS) and legacy Immigration and Naturalization Service (INS) have consistently recognized that Congress intended to set a very high standard for individuals seeking immigrant visas as aliens of extraordinary ability. *See* H.R. 723 101st Cong., 2d Sess. 59 (1990); 56 Fed. Reg. 60897, 60898-99 (Nov. 29, 1991). The term "extraordinary ability" refers only to those individuals in that small percentage who have risen to the very top of the field of endeavor. *Id.*; 8 C.F.R. § 204.5(h)(2).

The regulation at 8 C.F.R. § 204.5(h)(3) requires that the petitioner demonstrate the alien's sustained acclaim and the recognition of his or her achievements in the field. Such acclaim must be established either through evidence of a one-time achievement (that is, a major, international recognized award) or through the submission of qualifying evidence under at least three of the ten categories of evidence listed at 8 C.F.R. § 204.5(h)(3)(i)-(x).

In 2010, the U.S. Court of Appeals for the Ninth Circuit (Ninth Circuit) reviewed the denial of a petition filed under this classification. *Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010). Although the court upheld our decision to deny the petition, the court took issue with our evaluation of evidence submitted to meet a given evidentiary criterion.[2] With respect to the criteria at 8 C.F.R. § 204.5(h)(3)(iv) and (vi), the court concluded that while USCIS may have raised legitimate concerns about the significance of the evidence submitted to meet those two criteria, those concerns should have been raised in a subsequent "final merits determination." *Id.* at 1121-22.

The court stated that our evaluation rested on an improper understanding of the regulations. Instead of parsing the significance of evidence as part of the initial inquiry, the court stated that "the proper procedure is to count the types of evidence provided (which we did)," and if the petitioner failed to submit sufficient evidence, "the proper conclusion is that the applicant has failed to satisfy the regulatory requirement of three types of evidence (as we concluded)." *Id.* at 1122 (citing to 8 C.F.R. § 204.5(h)(3)).

Thus, *Kazarian* sets forth a two-part approach where the evidence is first counted and then considered in the context of a final merits determination. In this matter, we will review the evidence under the plain language requirements of each criterion claimed. As the petitioner did not submit qualifying evidence under at least three criteria, the proper conclusion is that the petitioner has failed to satisfy the regulatory requirement of three types of evidence. *Id.*

[2] Specifically, the court stated that we had unilaterally imposed novel substantive or evidentiary requirements beyond those set forth in the regulations at 8 C.F.R. § 204.5(h)(3)(iv) and 8 C.F.R. § 204.5(h)(3)(vi).

II. ANALYSIS

A. One-time Achievement

The regulation at 8 C.F.R. § 204.5(h)(3) states that an alien can establish sustained national or international acclaim through evidence of a one-time achievement, specifically a major, internationally recognized award.

In Part 3 of the Form I-290B, the petitioner states: "The applicant has received major, internationally recognized prizes and awards. The prizes were clearly related to excellency in the field of kickboxing and coaching." With regard to the petitioner's assertion that he has received major, internationally recognized prizes and awards, USCIS need not rely on unsubstantiated claims. *See 1756, Inc. v. U.S. Att'y Gen.*, 745 F. Supp. 9, 15 (D.D.C. 1990) (holding that an agency need not credit conclusory assertions in immigration benefits adjudications).

The petitioner submitted the following:

1. An April 1, 2006 certificate from the stating that the petitioner was "recognized as a kickboxing trainer from
2. A certificate from the stating that the petitioner "participated as coach at 5-12th November 2005";
3. A certificate from the stating that the petitioner "participated as a coach at Falls 5-12th November 2005"
4. A Diploma from the for the petitioner's "participation in held at on August 9, 2000 as a Coach";
5. A Diploma from the for the petitioner's "participation in held at ' (February 17 and 19, 2000);
6. A May 22, 2009 Certificate of Promotion from the stating that the petitioner "has been granted Kick Boxing, Black Belt 5th Degree (Dan)";
7. A Diploma from the stating: "Awarded to [the petitioner] (Coach Egypt) for his participation in [sic] Held At 9-14 May 2000 on ;
8. A Participation Certificate stating that the petitioner participated in the ' (1999);
9. A Participation Certificate stating that the petitioner participated in the ' team trainer"; and
10. A certificate stating that the petitioner "participated in the for as a trainer" (October 1998).

There is no documentary evidence showing that any of the preceding certificates (items 1 – 10) are major, internationally recognized awards. Given Congress' intent to restrict this category to "that small percentage of individuals who have risen to the very top of their field of endeavor," the regulation permitting eligibility based on a one-time achievement must be interpreted very narrowly,

with only a small handful of awards qualifying as major, internationally recognized awards. *See* H.R. Rep. 101-723, 59 (Sept. 19, 1990), *reprinted in* 1990 U.S.C.C.A.N. 6710, 1990 WL 200418 at *6739. The regulation is consistent with this legislative history, stating that a one-time achievement must be a major, internationally recognized award. 8 C.F.R. § 204.5(h)(3). The selection of Nobel Laureates, the example provided by Congress, is reported in the top media internationally regardless of the nationality of the awardees, is a familiar name to the public at large, and includes a large cash prize. Although an internationally recognized award could conceivably constitute a one-time achievement without meeting all of those elements, it is clear from the example provided by Congress that the award must be internationally recognized in the petitioner's field as one of the top awards in that field.

In this instance, the petitioner has failed to demonstrate that his participation as a trainer or coach at competitions constitutes evidence of his receipt of major, internationally recognized awards. Accordingly, the petitioner has failed to demonstrate evidence of a qualifying one-time achievement pursuant to the regulation at 8 C.F.R. § 204.5(h)(3).

B. Evidentiary Criteria[3]

Documentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor.

The director determined that the petitioner failed to establish eligibility for this regulatory criterion. As previously mentioned, the petitioner submitted multiple certificates reflecting his participation as a trainer or coach at competitions. Although the petitioner submitted letters of support mentioning his involvement in various international competitions, he did not submit documentary evidence demonstrating the national or international recognition of his particular awards. The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(i) specifically requires that the petitioner's awards be nationally or internationally recognized in the field of endeavor and it is his burden to establish every element of this criterion. There is no documentary evidence demonstrating that the petitioner's specific certificates were recognized beyond the presenting organizations or his references at a level commensurate with nationally or internationally recognized prizes or awards for excellence in the field.

In addition, the petitioner submitted an award certificate received by and letters of support mentioning medals won by other kickboxers that the petitioner has coached. Prizes or awards won by the petitioner's kickboxers in various athletic competitions do not constitute his receipt of those awards. The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(i) requires documentation of "the alien's receipt" of nationally or internationally recognized prizes or awards for excellence in the field of endeavor. Prizes or awards awarded to individuals other than the petitioner do not meet the plain language requirements of the regulation. As there is no evidence demonstrating that the petitioner has received nationally or internationally recognized prizes or

[3] On appeal, the petitioner does not claim to meet any of the regulatory categories of evidence not discussed in this decision. Therefore, no determination has been made regarding whether the petitioner meets the remaining categories of evidence.

awards for excellence in coaching, the petitioner has not established that he meets the plain language requirements of this regulatory criterion.

> *Documentation of the alien's membership in associations in the field for which classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields.*

The petitioner submitted documentation of his membership in the There is no documentary evidence (such as bylaws, a constitution, or membership regulations) showing, however, that the require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields.

The director determined that the petitioner's evidence did "not show that the basis for granting memberships in the submitted associations was the [petitioner's] outstanding achievements in the field of endeavor as judged by recognized national or international experts in the field."

In Part 3 of the Form I-290B, the petitioner states: "There is no requirement in the applicable reg[ulation]s to show that membership is restricted to people of outstanding achievements." The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(ii), however, specifically requires evidence of "membership in associations . . . which require outstanding achievements of their members." Accordingly, we affirm the director's finding that the petitioner has not established eligibility for this regulatory criterion.

> *Published material about the alien in professional or major trade publications or other major media, relating to the alien's work in the field for which classification is sought. Such evidence shall include the title, date, and author of the material, and any necessary translation.*

The petitioner submitted a March 25, 1995 article in newspaper entitled ; a January 1996 article in newspaper entitled ; an October 20, 1998 in entitled a March 12, 2001 article in newspaper entitled ' ; an article (year not provided) in newspaper entitled ' ; a May 28, 2000 article in entitled ' '; a December 17, 2003 article in newspaper entitled and a February 21, 1994 article in newspaper entitled ' The English language translations accompanying the preceding articles were not certified by the translator as required by the regulation at 8 C.F.R. § 103.2(b)(3). Any document containing foreign language submitted to USCIS shall be accompanied by a full English language translation that the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English. *Id.*

In addition, the director stated that the petitioner had not shown that the submitted material "was published in professional or major trade publications or other major media." For example, the petitioner did not submit evidence such as objective circulation figures showing that the preceding newspapers are major media. The director further stated: "If the petitioner is not the primary subject of the material, then it fails to meet this criterion." For instance, many of the articles only briefly mentioned the petitioner, and were about an event or the kickboxing team's athletic accomplishments, not the petitioner.

In Part 3 of the Form I-290B, the petitioner asserts that the "published material clearly referred to [his] work in the field" and that there is no requirement that that he must be the "primary subject of material." The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iii), however, specifically requires "published material about the alien." Articles that are not about the petitioner do not meet this regulatory criterion. *See, e.g., Negro-Plumpe v. Okin,* 2:07-CV-00820 at *1, *7 (D. Nev. Sept. 2008) (upholding a finding that articles about a show are not about the actor).

In light of the above, we affirm the director's finding that the petitioner has not established eligibility for this regulatory criterion.

> *Evidence of the alien's participation, either individually or on a panel, as a judge of the work of others in the same or an allied field of specification for which classification is sought.*

The director determined that the petitioner established eligibility for this criterion. A review of the record of proceeding, however, does not reflect that the petitioner submitted sufficient documentary evidence establishing that he meets the plain language of this criterion, and the director's determination on this issue will be withdrawn. The AAO conducts appellate review on a *de novo* basis. *See Siddiqui v. Holder*, 670 F.3d 736, 741 (7th Cir. 2012); *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004); *Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

The petitioner submitted a certificate from the stating that he "formed part of the referees and judges panel at the 5-12th November 2005." The preceding certificate, however, does not specify whether the petitioner participated as a judge or a referee. For example, the certificate does not indicate that the petitioner scored kickboxing matches as a judge. With regard to serving as a referee, there is no evidence demonstrating that a referee actually judges the competitors' work, rather than only ensuring that rules are followed and that the kickboxing match is held in a safe and fair manner. The record lacks official competition rules from the showing that serving as a referee equates to participating as "a judge" of the work of others in the same or an allied field.

In addition, the petitioner submitted a certificate for his successful participation in the from July 11-15, 2011 in Although the petitioner completed the training seminars, there is no documentary evidence of his participation as a judge subsequent to taking the seminars.

The petitioner also submitted a June 26, 2013 letter from a boxing trainer at in New York, asserting that the petitioner "served as a panel judge at numerous events." Mr. however, does not identify any events where the petitioner served as a panel judge, or point to specific documentary evidence of the petitioner's participation. Again, USCIS need not rely on unsubstantiated claims. *See 1756, Inc. v. U.S. Att'y Gen.*, 745 F. Supp. at 15; *see also Visinscaia*, 2013 WL 6571822, at *4, *6 (upholding USCIS' decision to give limited weight to uncorroborated assertions from practitioners in the field). Moreover, if testimonial evidence lacks specificity, detail, or credibility, there is a greater need for the petitioner to submit corroborative evidence. *Matter of Y-B-*, 21 I&N Dec. 1136 (BIA 1998).

Without reliable evidence showing that the petitioner has participated, either individually or on a panel, as a judge of the work of others in his sport, the director's finding that the petitioner's evidence meets this regulatory criterion is withdrawn. Accordingly, the petitioner has not established that he meets this regulatory criterion.

> *Evidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field.*

The director determined that the petitioner failed to establish eligibility for this regulatory criterion. The director stated that the letters from the petitioner's peers and colleagues failed to demonstrate that his work was original and of major significance in the field. The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(v) requires "[e]vidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of *major significance* in the field." (Emphasis added.) Here, the evidence must rise to the level of original athletic contributions "of major significance in the field." The phrase "major significance" is not superfluous and, thus, it has some meaning. *Silverman v. Eastrich Multiple Investor Fund, L.P.*, 51 F. 3d 28, 31 (3rd Cir. 1995) *quoted in APWU v. Potter*, 343 F.3d 619, 626 (2nd Cir. Sep 15, 2003). In the appellate submission, the petitioner does not contest the director's findings regarding the letters from his peers and colleagues, or point to specific letters that demonstrate his eligibility for this criterion.

Instead, in Part 3 of the Form I-290B, the petitioner argues that the director's "decision misinterprets 'major significance,'" but he does not point to any specific examples of such misinterpretation in the director's analysis of the evidence. In addition, the petitioner asserts that his "work is of major significance in Arabic-speaking world, as shown by documents submitted." The petitioner, however, does not specifically identify any of the submitted documents that support his assertion. A passing reference without substantive arguments is insufficient to raise that ground on appeal. *Desravines v. U.S. Atty. Gen.*, 343 Fed. Appx. 433, 435 (11th Cir. 2009). Moreover, USCIS need not rely on unsubstantiated claims. *See 1756, Inc. v. U.S. Att'y Gen.*, 745 F. Supp. at 15.

Without additional, specific evidence showing that the petitioner's work has been unusually influential, has substantially affected his sport, or has otherwise risen to the level of original contributions of major significance in the field, petitioner has not established that he meets this regulatory criterion.

C. Summary

The petitioner has failed to satisfy the antecedent regulatory requirement of three categories of evidence.

III. CONCLUSION

The documentation submitted in support of a claim of extraordinary ability must clearly demonstrate that the alien has achieved sustained national or international acclaim and is one of the small percentage who has risen to the very top of the field of endeavor.

Even if the petitioner had submitted the requisite evidence under at least three evidentiary categories, in accordance with the *Kazarian* opinion, the next step would be a final merits determination that considers all of the evidence in the context of whether or not the petitioner has demonstrated: (1) a "level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the[ir] field of endeavor" and (2) "that the alien has sustained national or international acclaim and that his or her achievements have been recognized in the field of expertise." 8 C.F.R. § 204.5(h)(2) and (3); *see also Kazarian,* 596 F.3d at 1119-20. Although we conclude that the evidence is not indicative of a level of expertise consistent with the small percentage at the very top of the field or sustained national or international acclaim, we need not explain that conclusion in a final merits determination.[4] Rather, the proper conclusion is that the petitioner has failed to satisfy the antecedent regulatory requirement of three categories of evidence. *Id.* at 1122.

The petitioner has not established eligibility pursuant to section 203(b)(1)(A) of the Act and the petition may not be approved.

In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

ORDER: The appeal is dismissed.

[4] In any future proceeding, the AAO maintains the jurisdiction to conduct a final merits determination as the office that made the last decision in this matter. 8 C.F.R. § 103.5(a)(1)(ii). *See also* section 103(a)(1) of the Act; section 204(b) of the Act; DHS Delegation Number 0150.1 (effective March 1, 2003); 8 C.F.R. § 2.1 (2003); 8 C.F.R. § 103.1(f)(3)(iii) (2003); *Matter of Aurelio*, 19 I&N Dec. 458, 460 (BIA 1987) (holding that legacy INS, now USCIS, is the sole authority with the jurisdiction to decide visa petitions).